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4 Attorneys for Defendant

5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

2:15-CR-011-TOR

8 Plaintiff,

9 vs.

Motion to Suppress Evidence and  
Supporting Memorandum

10 MICHAEL CURTIS PAINTER,

11 Defendant.  
12

13 Michael Curtis Painter, through counsel, moves the Court to  
14 suppress evidence seized during the search of the car Mr. Painter was  
15 driving as obtained in violation of the Fourth Amendment.

16 **Factual summary**

17  
18 On December 3, 2013, at approximately 7:24 p.m., Corporal Oien of  
19 the Spokane Police Department, saw a car drive through a stop sign  
20 without stopping. Corporal Oien followed the car and eventually  
21 activated his squad lights. The car did not stop, but rather crossed to  
22 lanes and continued to accelerate through a red light and pulled into the  
23

24 Motion to suppress evidence  
and supporting memorandum

1 Jack in the Box parking lot and back out again. Corporal Oien activated  
2 his siren and began to pursue the car. The car drove over the curb and  
3 onto the sidewalk and back on the road before being struck by a  
4 westbound truck. The impact caused the car to strike the Army Surplus  
5 Store and come to a stop. (BS 00000013-14)  
6

7 Once backup arrived, Corporal Oien ordered the individual out of  
8 the passenger door and he was promptly arrested for attempting to elude  
9 a police officer and handcuffed. Officer Flynn searched the individual.  
10 He was then seated on the sidewalk and attended to by medics. (BS  
11 00000014, 16)  
12

13 Officer Flynn then approached the Dodge Stratus with the intent to  
14 search the glove box for registration paperwork. He observed that the  
15 air bag had deflated. He entered the car, lifted the air bag and saw the  
16 handle of a firearm inside the open glove box near a bag of green leafy  
17 substance. He notified Corporal Oien of his find. (BS 00000016)  
18

19 The driver of the car was identified as Michael Painter, an eleven-  
20 time convicted felon. (BS 00000016).

21 On December 4, 2013, Officer Anderson applied for and obtained a  
22 search warrant based on Officer Flynn's previous search and visual find  
23

1 of a handgun and green leafy substance. Law enforcement found an  
2 additional handgun and ammunition as well as other items of evidence.  
3 (BS 00000033-34)

### 4 **Legal Analysis**

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6 Officer Flynn's warrantless search of the car did not fall into one of  
7 the well-delineated exceptions to the search warrant requirement and all  
8 evidence seized is fruits of the original unlawful search.

#### 9 **1. Search incident to arrest**

10 Police may search the passenger compartment of a car incident to a  
11 recent occupant's arrest only if it "is reasonable to believe" that the  
12 arrestee might access the car at the time of the search or that the car  
13 contains evidence of the offense of arrest. *Arizona v. Gant*, 556 U.S. 332,  
14 129 S.Ct. 1710 (2009). Here, Corporal Oien waited for backup before  
15 ordering Michael Painter out of the car. Once out of the car, Mr. Painter  
16 was arrested for attempting to elude police, handcuffed and placed on  
17 the side of the street. It was not reasonable to believe that Mr. Painter  
18 might have access to the car at the time Officer Flynn searched it.  
19 Further, there was not probable cause that the car would contain  
20 evidence of the offense of arrest – attempting to elude police. Thus,  
21  
22  
23

1 under *Gant*, search incident to arrest is not a viable exception for Officer  
2 Flynn's search.

3           **2.     Automobile exception**

4           In order to search under the automobile exception, police must  
5 have more than probable cause to stop the car. They must have probable  
6 cause to believe that contraband is actually within the car. *Whren v.*  
7 *United States*, 517 U.S. 806, 116 S.Ct. 1769 (1996). Here, law  
8 enforcement saw Michael Painter drive through a stop sign, speed and  
9 attempt to elude police. These illegal traffic acts create probable cause  
10 to stop the car. They do not create probable cause to believe contraband  
11 is within the car. Thus, under *Whren*, the automobile exception is not a  
12 viable exception for Officer Flynn's warrantless search.

13           Based on the foregoing, Officer Flynn's warrantless search violated  
14 Michael Painter's Fourth Amendment right against unreasonable  
15 searches and seizures and all items seized must be suppressed as fruits  
16 of the original unlawful search.  
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1 Dated: March 17, 2015

2 Respectfully Submitted,

3 *S/ Andrea K. George*

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10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on March 18, 2015, I electronically filed the  
12 foregoing with the Clerk of the Court using the CM/ECF System which  
13 will send notification of such filing to the following: MATTHEW  
14 DUGGAN, Assistant United States Attorney.

15  
16 *S/ Andrea K. George*

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